

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL NIEVES,

Plaintiff,

– against –

SHIZHEN JIA,

Defendant.

ORDER

21-cv-8753 (ER)

Ramos, D.J.:

On September 6, 2022, Defendant advised the Court that *pro se* Plaintiff had died. Doc. 34. On September 8, 2022, the Court then stayed the proceedings in this case pending the submission of a motion for substitution by any party seeking to prosecute Plaintiff's action. *See* Doc. 35. Federal Rule of Civil Procedure 25(a)(1) states that if a motion for substitution is "not made within 90 days after service of a statement noting the death [of the party], the action by or against the decedent must be dismissed." *See also English v. Murphy-Lattanzi*, No. 12-cv-419 (JS), 2015 WL 630248, at *2 (E.D.N.Y. Feb. 12, 2015) ("Rule 25(a)(1) provides a ninety-day window within which to file a motion for substitution, calculated from the filing of the suggestion of death. Failure to file a motion for substitution within the prescribed period generally requires dismissal of the action." (internal citations omitted)); *Nieves v. New York State Office of Mental Health*, No. 20-cv-9502 (GHW), Doc. 68 (S.D.N.Y. Dec. 2, 2022) (dismissing related action pursuant to Rule 25(a)(1) following death of Michael Nieves). Nearly a year has passed, and no motion for substitution has been filed. Accordingly, this action is dismissed pursuant to Rule 25(a)(1).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore *in forma pauperis* status is denied for purposes of an

appeal. *See Coppededge v. United States*, 369 U.S. 438, 444–45 *1962).

It is SO ORDERED.

Dated: June 26, 2023
New York, New York



Edgardo Ramos, U.S.D.J.